

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Reorganization and Revision of )  
Parts 1,2,21 and 94 of the Rules )  
to Establish a New Part 101 Governing )  
Terrestrial Microwave Fixed Radio )  
Services )

WT Docket No. 94-148

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COMMENTS OF ALLTEL MOBILE CORPORATION

ALLTEL Mobile Communications, Inc.<sup>1</sup> ("Alltel") hereby submits its comments in the above-captioned rule making regarding the Commission's proposed consolidation of the various rules governing terrestrial microwave fixed radio services into a new Part 101.<sup>2</sup> In support thereof, the following is respectfully set forth:

I. Introduction

1. Alltel fully supports the Commission's goals of restructuring the fixed microwave rules so that they are easier for the public to both understand and use. Alltel also commends the Commission for its attempts to conform similar rule provisions currently contained in the various parts to the

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<sup>1</sup> Alltel, through its subsidiaries and affiliates, provides cellular service in markets throughout the nation.

<sup>2</sup> In the Matter of Reorganization and Revision of Parts 1,2,21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, WT Docket No. 94-148, FCC 94-314 (Released December 28, 1994) ("NPRM").

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maximum extent possible. The Commission should continue to revisit its rules in an ongoing effort to eliminate redundancy, remove obsolete provisions and to simplify the application process.

## **II. Application Processing**

2. Alltel generally supports the Commission's proposed amendments governing the showings required in microwave applications as they will both relieve the applicants of administrative burdens and permit more expeditious processing of applications. The elimination of the financial showings currently required in Sections 21.13(a) and 21.17 of the rules should be adopted. The Commission correctly notes that issues respecting the financial capability of applicants in the microwave services being transferred to Part 101 have not been a concern. NPRM at para. 11. In the event a material issue of financial qualification is presented, the Commission may require an amendment detailing the applicant's finances under proposed Section 101.19, which would require the applicant to demonstrate its legal and technical qualifications as well as any other showings which the Commission may require of the applicant to demonstrate its qualifications.

3. Similarly, Alltel supports the Commission's proposal to delete the separate public interest showings currently required under Section 21.12(a)(4), and Section 21.706(a) in favor of the general application requirements specified in Section 101.19 of the proposed rules. With respect to the showing required under

Section 21.12(a)(4), the Commission may establish a presumption that granting complete applications filed by qualified applicants serves the public interest. Interested parties, however, should continue to be afforded the opportunity to rebut the Commission's public interest presumption through the filing of an opposition as provided in proposed Section 101.43 should any material issue of fact arise regarding either an applicant's qualifications or the lack of a public interest justification.

4. The showing required by Section 21.706(a) should also be deleted. Cellular licensees, as radio carriers, typically use facilities licensed in the Point-to-Point Microwave Service to interconnect cell sites, and consequently, much of the information sought by the Commission under Section 21.706(a) (such as projected future circuit growth,) is superfluous.

### **III. Assignment and Transfer Applications**

5. The Commission seeks comment on extending the time frame in which assignments, partial assignments and transfers of control of microwave facilities may be consummated. The proposed text of new Sections 101.15(e), 101.15(f) and 101.15(g), however, retains the 45 day period contained in the Commission's current rules. While the 365 day period under consideration by the Commission (NPRM at para. 12) may be unnecessarily long, Alltel suggests that at a minimum, the period for consummation be extended to 60 days in order to conform with the time frame provided by the rules for other services, such as Part 22 facilities. Further, Alltel suggests that the requirement that

the Commission be informed of the consummation of the transaction should be retained inasmuch as it is a minimal burden to the parties and serves to avoid any confusion as to whether a particular transaction has been completed.

6. Retention of the notification requirement would also permit the Commission to simply cancel an authorization issued for a partial assignment of license which is not consummated. Alltel submits that this approach would be preferable to the requirement that licensees file FCC form 494 to return the authorization to its original form as required by proposed Section 101.15(f)(2) in the event a granted partial assignment transaction remains unconsummated.

7. Alltel also notes that under proposed Section 101.37, the Commission would not normally issue a public notice listing pro forma assignments or transfers of control. The proposed rule should be clarified to indicate that while the filing of pro forma applications may not appear on public notice, the public will be afforded notice of the grant. Placing pro forma grants on public notice triggers the time frame for an action of the Commission to become final and non-appealable, and thereby permits parties to consummate transactions on the basis of a final non-appealable order.

#### **IV. Technical Content of Applications.**

8. Alltel generally supports the formulation of proposed Section 101.21 over the requirements of current Section 21.15 and agrees that the showings respecting vertical profile sketches and

site availability should be deleted as part of the ongoing simplification of the application process. Additionally, Alltel supports deleting the requirement that applicants detail their maintenance procedures and identify maintenance personnel in favor of a rule of general applicability which would reassert the licensee's ultimate responsibility for maintenance and control of the station. Any such rule should also require that maintenance contracts be in writing.

9. Proposed Section 101.21(a) requires that each application proposing a new or modified antenna structure for a station include a copy of the FAA "no hazard determination" if FAA notification is required under Part 17 of the Rules. The current formulation of the rule under Section 21.15(d) requires only that an applicant proposing a new or modified antenna structure indicate whether any necessary notification to the FAA has been submitted. The proposed rule would apparently institute a new requirement that an FAA determination of no hazard to air navigation must be received and included in an application for it to be considered complete and not subject to dismissal as defective under proposed Section 101.35.

10. Alltel is concerned with the proposed rule revision. The Commission and the FAA process applications and notifications in notably different time frames. Requiring applicants to wait until the FAA has finalized its determination would have the effect of unnecessarily delaying the filing of applications. The net effect would be a delay in the licensing of facilities which

ultimately translates into a delay in the initiation of service to the public. Alltel suggests that the provision of Section 21.15(d) be retained so that both the FAA and Commission may process an applicants request concurrently.

11. Further, the new rule would, by practice effect, virtually eliminate the ability of potential applicants to file mutually exclusive applications. It would be difficult to obtain an FAA determination for a new tower by the earliest date after public notice upon which the Commission could act on an application<sup>3</sup> against which the potential applicant's proposal might conflict.

12. Alltel also notes that the formulation of proposed Section 101.21(a) may conflict with the amendment to Section 21.15 of the rules recently considered by the Commission in its proposal to revise Part 17.<sup>4</sup> To the extent proposed 21.15(d) indicates that a no hazard determination is required for

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<sup>3</sup> Proposed Section 101.37(c) of the rules, in a manner similar to current Section 21.27(c), provides that the Commission may grant an application anytime after the expiration of the 30 day period following the listing of the application on public notice. Any potential mutually exclusive applicant would therefore have to obtain the FAA determination and file within 30 days of the public notice listing the first application.

<sup>4</sup> See, In the Matter of Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures, WT Docket 95-5, FCC 95-16 (Released January 20, 1995). Revised Section 21.15, as proposed in that docket, adds a new Section (d) which indicates that FAA no hazard determination may be required prior to authorization, not for purposes of filing an application. This approach is also consistent with the proposed revised Section 21.15 which is to remain in Part 21 even after the creation of Part 101.

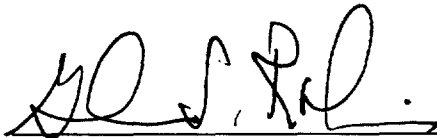
authorization, it is to be preferred over the proposed requirements of Section 101.21(a). In any case, the Commission should address the issue in a consistent manner under both dockets.

**V. Retention and Posting of Station License**

13. The Commission seeks comment as to what requirements it should adopt regarding retention or posting of the station's licenses. Alltel believes current Section 21.201 of the rules should be retained. The rule is not burdensome to licensees and affords both the Commission and other parties the opportunity to ensure that facilities are operating upon inspection within the parameters listed on the station authorization.

Respectfully submitted,

ALLTEL Mobile Communications, Inc.

A handwritten signature in dark ink, appearing to read "Glenn S. Rabin", is written over a horizontal line.

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